**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Chapter VIII Rule 32 (2) (b)

Description of the case

W.P. No. 273 of 2006 (S/B)

Date of decision: 6th September, 2006

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date Initial of Judge

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before Judge for signature.

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Writ Petition No. 273 of 2006 (S/B)**

1. Himmat Chand S/o Late Sri Nari Chand,
   R/o Shiv Parvati Bhawan, Gandhi Colony,
   Bhowali, District Nainital.
2. Satish Kumar S/o Sri Amarnath,
   R/o 72/4 Talwar Lines, Dehradun. …….. Petitioners

Versus

1. Union of India through Secretary,
   Ministry of Defence, South Block, New Delhi.
2. Engineer-in-Chief, Army Headquarters,
   Kashmir House, New Delhi.
3. Director General (Personnel),
   E-1, DPC-1, E-In-C Branch, Army Headquarters.
   PHQ, P.O. New Delhi – 110011.
4. Chief Engineer, Delhi Zone, MES,
   Delhi Cantt – 110010.
5. Sri Brahm Prakash Sharma, MES – 315065,
   Junior Engineer (Civil),
   Working in the office of GE (South),
   Delhi Cantt, Delhi.
6. MES – 315615, Govind Singh Tomar,
   Junior Engineer (Civil),
   Working in the office of GE (Central),
   Delhi Cantt, Delhi.
7. MES – 315467 Jatinder Kumar,
   Junior Engineer, Working in the office of
   CE (R&D), Delhi.
8. MES – 315127 Ramandeep Bansal,
   Junior Engineer (Civil),
   Working in the office of GE Sriganganagar.
9. MES – 314778 Sukhvinder Singh,
   Junior Engineer (Civil),
   Working in the office of GE
   Sriganganagar. …… Respondents

Mr. D.S. Patni, Advocate for the petitioners.
Mr. Arvind Vashishth, Assistant Solicitor General for respondents Nos. 1 to 4.

**JUDGMENT**

**Coram: Hon'ble Rajeev Gupta, C.J.**
**Hon'ble Rajesh Tandon, J.**

**RAJEEV GUPTA, C. J. (Oral)**

Mr. D.S. Patni, Advocate for the petitioners.

Mr. Arvind Vashishth, Assistant Solicitor General for respondents Nos. 1 to 4.

They are heard.

2. Mr. Arvind Vashishth, the learned Assistant Solicitor General appearing for respondents Nos. 1 to 4 has raised a preliminary objection about the maintainability of the writ petition on the ground that as the impugned judgment dated 10.03.2006 was passed by the New Delhi Bench of Central Administrative Tribunal, the High Court of Uttaranchal has no jurisdiction to entertain the writ petition against the said judgment.

3. The petitioners have filed this writ petiion for the following reliefs:

> "(i) Issue a writ, order or direction in the nature of certiorari quashing the judgment and order dated 10.03.2006 passed by the Learned Central Administrative Tribunal, Principal Bench in O.A. No. – 1124/2005.
>
> (ii) Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
>
> (iii) Award the cost of the petition in favour of the petitioner."

4. Thus, the petitioner, in substance, are seeking quashing of the impugned judgment dated 10.03.2006 passed by New Delhi Bench of Central Administrative Tribunal in O.A. 1124 of 2005.

5. The Apex Court, in the case of **L. Chandra Kumar Vs. Union of India and others** reported in **(1997) 3 SCC 261**, observed in para 99:

> "99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of

> Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 232-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.

6. From the above-quoted dictum of the Apex Court in the case of L.Chandra Kumar, it is apparent that all decisions of the Tribunal would be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction, the Tribunal concerned falls. As the impugned judgment dated 10.03.2006 has not been passed by a Tribunal situated within the territorial jurisdiction of the High Court of Uttaranchal, the present writ petition is, apparently, not maintainable.

7. The mere fact that the petitioners apprehend that the impugned judgment, when implemented, would adversely affect the petitioners, who are posted in the State of Uttaranchal, would not confer jurisdiction on the High Court of Uttaranchal to entertain a writ

petition challenging the judgment passed by a Tribunal, which is not situated within the State of Uttaranchal.

8. In this view of the matter, the writ petition is liable to be dismissed and is hereby dismissed summarily.

9. Consequently, CLMA No. 11042 of 2006 also stands dismissed.

**(Rajesh Tandon, J.)** **(Rajeev Gupta, C.J.)**
06.09.2006 06.09.2006

G